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ARTIFEX SOFTWARE, INC.

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA**

ARTIFEX SOFTWARE, INC.,
Plaintiff,
v.
CONDUIT LTD.,
Defendant

Case No.

COMPLAINT FOR

1. COPYRIGHT INFRINGEMENT
 2. BREACH OF CONTRACT
 3. BREACH OF CONTRACT

DEMAND FOR JURY TRIAL

Plaintiff Artifex Software, Inc. (“Artifex”) for its Complaint against Defendant Conduit Ltd. (“Conduit”), which also does business under the names “Como” and “Swiftic,” alleges and avers as follows:

INTRODUCTION

1. Artifex is the owner of MuPDF, a leading program used to interpret certain page description language files, such as Adobe Systems Incorporated’s (“Adobe”) Portable Document Format (“PDF”) files. MuPDF is a widely used PDF interpreter and far outperforms its competitors on reliability and performance benchmarks. In addition to offering commercial licenses to MuPDF, Artifex has licensed and continues to license MuPDF to the public under conditional open source licenses—such as the GNU General Public License version 3.0 (“GNU

1 GPL”) and the GNU Affero General Public License (“GNU AGPL”) (collectively, “the GPL
2 open source licenses”—to further promote the advancement of interpreter technologies.

3 2. Defendant Conduit has unlawfully, willfully, and for commercial advantage
4 copied, used, and incorporated Artifex’s copyrighted MuPDF software into at least 9,505 mobile
5 applications without the consent of Artifex in violation of federal law and to Artifex’s detriment.
6 Conduit has never entered into a commercial license from Artifex for Conduit’s use and
7 distribution of MuPDF. Further, Conduit has abused Artifex’s altruism by reaping the benefits of
8 a MuPDF license under the GNU AGPL or, in the alternative, the GNU GPL, without complying
9 with the terms of those licenses. Accordingly, Conduit’s use and distribution of MuPDF in its
10 software is and has been unlicensed and unauthorized.

11 3. After discovering Conduit’s infringement of Artifex’s valuable copyright in
12 MuPDF and abuse of the GPL open source licenses, Artifex demanded that Conduit cease its
13 infringement and remit to Artifex a reasonable royalty for Conduit’s years of unlicensed use of
14 MuPDF. Rebuffed by Conduit, Artifex turns to this Court to enjoin Conduit from further
15 infringement and to seek relief and recovery for Conduit’s copyright infringement and abuse of
16 Artifex’s open source licenses.

NATURE OF THE CASE

18 4. This action seeks to enjoin Conduit from unauthorized and unlawful use of
19 Artifex's copyright in MuPDF and to hold Conduit accountable for injury inflicted by its
20 copyright infringement and breach of the GNU AGPL or, in the alternative, the GNU GPL.

21 5. Artifex seeks permanent injunctive relief and damages under the laws of the
22 United States and the State of California.

PARTIES

24 6. Plaintiff Artifex is a California corporation with its principal place of business at
25 1305 Grant Avenue, Suite 200, Novato, California 94945.

26 7. Defendant Conduit is an international software company headquartered in Israel
27 with a principal place of business at 2 Ilan Ramon Street, Ness-Ziona, Israel, 7403635. On
28 information and belief, Conduit does business in California. On information and belief, Conduit

1 has offered and distributed its infringing products incorporating MuPDF in California through the
2 Internet.

3 **JURISDICTION AND VENUE**

4 8. Artifex's claim for copyright infringement arises under the Copyright Act of 1976,
5 17 U.S.C. § 101 *et seq.* Artifex also brings a related state law claim for breach of contract.

6 9. This Court has original subject matter jurisdiction over this action under 28 U.S.C.
7 §§ 1331, 1338, and 1367.

8 10. This Court has specific personal jurisdiction over Conduit as it, through (1) its
9 offering and distribution of its infringing products containing MuPDF through the Internet to
10 citizens of California and (2) conducting business with companies in California such as Artifex,
11 including entering into the GNU AGPL or the GNU GPL with Artifex, purposefully committed
12 within California the acts from which these claims arise and/or committed tortious acts outside
13 California, knowing and intending that such acts would cause injury within the state to Artifex, a
14 California corporation. The Court also has general personal jurisdiction over Conduit as it
15 conducts continuous, systematic, and routine business through the Internet within the state of
16 California and within the jurisdiction of this Court, which makes Conduit essentially at home in
17 California.

18 11. Venue is proper in this District under 28 U.S.C. §§ 1391 and 1400(a).

19 **INTRADISTRICT ASSIGNMENT**

20 12. This is an Intellectual Property Action and therefore assignment to any division of
21 the Court is proper pursuant to Civil L.R. 3-2(c). Artifex believes assignment to the San
22 Francisco division is particularly appropriate given its proximity to the principal offices of Artifex
23 as well as Artifex's counsel of record.

24 **GENERAL ALLEGATIONS**

25 **Artifex and MuPDF**

26 13. Artifex is a closely-held, private corporation that was formed in 1993 and is
27 headquartered in Novato, California. Artifex develops and licenses software products that
28 interpret files written in a page description language ("PDL").

1 14. A PDL is a computer language developed for describing the contents of a printed
2 page. A widely used example of a PDL is the Portable Document Format (“PDF”) developed by
3 Adobe Systems Incorporated (“Adobe”). PDF files generally allow for a document created on
4 one platform to be displayed and/or printed on another platform exactly as it had been on the first.
5 This is true regardless of whether the document consists of graphics, text, or both. Moreover,
6 PDF files will display text on the screen as it would be displayed on printed pages regardless of
7 the font that the text was created in and regardless of whether the displaying computer (or printer)
8 is loaded with such fonts. Fonts used in PDF files are embedded within the PDF file itself,
9 eliminating the need for both computers to install the same fonts. PDF files, moreover, are
10 generally created from the print stream generated by a program. A PDF creator will capture the
11 information from the print stream and convert it into a PDF file. One drawback of PDF files is
12 that, in general, they cannot be edited once the underlying document is encapsulated as a PDF
13 file. These are called “static” PDF files.

14 15. MuPDF is a program developed by Artifex that can interpret PDF files.

15 16. MuPDF is a widely used PDF interpreter. Artifex has earned the confidence of its
16 customers through the demonstrated reliability of its products and highly competitive results on
17 performance benchmarks. These results have been accomplished only through extensive
18 investment in research and development of the MuPDF software as well as the scrutiny of dozens
19 of external beta testers and thousands of diverse users on the Internet. Artifex has expended
20 substantial amounts of money on research and development in order to improve and update
21 MuPDF.

22 17. Artifex’s business is, in part, based on the revenues derived from Artifex’s
23 position as the exclusive commercial licensing agent of MuPDF. Artifex licenses MuPDF to the
24 public under different licensing schemes. For those seeking to commercially distribute MuPDF
25 or any product that incorporates MuPDF, Artifex will grant, for a fee, a license to use, modify,
26 copy, and/or distribute MuPDF.

27 18. For non-commercial users and users willing to comply with certain open-source
28 licensing requirements, Artifex currently provides licenses for MuPDF under the GNU AGPL. A

true and correct copy of the GNU AGPL is attached hereto as **Exhibit 1**. Before February 2013, and at least since January 21, 2010, Artifex provided licenses for MuPDF under the GNU GPL. A true and correct copy of the GNU GPL is attached hereto as **Exhibit 2**.

19. Artifex does not charge a fee for licenses granted under the GPL open source licenses, which were created to promote the open-source development of software products. Towards that end, the GPL open source licenses grant the end user the right to copy, modify, or distribute complying copies of MuPDF.

Conduit and Its Infringing Software

20. Conduit is a privately-held international software company headquartered in Israel, does business under the names “Como” and “Swiftic,” and describes itself as “Israel’s first billion-dollar internet company.”

21. On information and belief, at least as early as 2014, Conduit downloaded a copy of Artifex's MuPDF software previously licensed to non-commercial users under the GNU AGPL. In the alternative, and dependent on the exact date(s) Conduit downloaded the version(s) of MuPDF that Conduit used, Conduit used a version of MuPDF licensed to non-commercial users under the GNU GPL.

22. Conduit subsequently incorporated Artifex's MuPDF software into at least 9,505 of its mobile applications (collectively, the "Conduit Apps").

23. Conduit purportedly removed MuPDF from the Conduit Apps in April 2017 after Conduit's customers informed it that Artifex had identified Conduit's mobile applications as infringing Artifex's copyright in MuPDF.

24. After hearing from its customers in April 2017, Conduit purportedly took steps to comply with GNU AGPL or, in the alternative, the GNU GPL, by providing the source code for MuPDF—but not the source code for the Conduit Apps incorporating MuPDF—for download

1 from its website¹ and updating its “Swiftic Membership Agreement”² to include language
 2 regarding open source software notices.

3 25. Before Conduit’s purported removal of MuPDF from the Conduit Apps and its
 4 belated attempts to comply with the GNU AGPL or, in the alternative, the GNU GPL, however,
 5 Conduit distributed versions of the Conduit Apps containing MuPDF to its customers over the
 6 Internet.

7 26. Because Conduit used and distributed MuPDF without a commercial license with
 8 Artifex, Conduit has consented to the terms of the GNU AGPL or, in the alternative, the GNU
 9 GPL, and is a party to that agreement with Artifex.³ The GNU AGPL and GNU GPL provide at
 10 Section 9:

11 You are not required to accept this License in order to receive or run
 12 a copy of the Program. Ancillary propagation of a covered work
 13 occurring solely as a consequence of using peer-to-peer transmission
 14 to receive a copy likewise does not require acceptance. However,
 15 nothing other than this License grants you permission to propagate
 16 or modify any covered work. These actions infringe copyright if you
 17 do not accept this License. Therefore, by modifying or propagating a
 18 covered work, you indicate your acceptance of this License to do so.

19 27. Conduit’s use of MuPDF, however, did not comply with the conditions imposed
 20 by the GNU AGPL or the GNU GPL.

21 28. Before April 2017, Conduit integrated MuPDF into the Conduit Apps in a way that
 22 an end user interfaced with only the Conduit Apps without any option for not including MuPDF
 23 or the obligations concerning MuPDF under the GNU AGPL or the GNU GPL. The end user was
 24 never separately notified that MuPDF was part of the Conduit Apps. Conduit’s use and
 25 incorporation of MuPDF was seamless and entirely invisible to the end user.

26 ¹ The file paths for the source code files demonstrate that they were uploaded in April 2017. See
 27 <http://app4mobilebiz.wpengine.com/wp-content/uploads/2017/04/PDFViewerFragment.txt> and
<http://app4mobilebiz.wpengine.com/wp-content/uploads/2017/04/android-pdfview-master.zip>.

28 ² Available at: <http://app4mobilebiz.wpengine.com/swiftic-membership-agreement.html>

29 ³ For purposes of this complaint, Artifex alleges alternative breaches of sections of the GNU
 30 AGPL and the GNU GPL that are identical both in their language and numbering.

1 29. Because the Conduit Apps incorporated MuPDF in this way, Conduit was required
2 to distribute its software with the accompanying source code. The GNU AGPL and the GNU
3 GPL provide at Section 6:

4 You may convey a covered work in object code form under the terms
5 of sections 4 and 5, provided that you also convey the machine-
6 readable Corresponding Source under the terms of this License, in
one of these ways:

7 a) Convey the object code in, or embodied in, a physical product
8 (including a physical distribution medium), accompanied by the
Corresponding Source fixed on a durable physical medium
customarily used for software interchange.

9 b) Convey the object code in, or embodied in, a physical product
10 (including a physical distribution medium), accompanied by a
written offer, valid for at least three years and valid for as long as you
offer spare parts or customer support for that product model, to give
anyone who possesses the object code either (1) a copy of the
Corresponding Source for all the software in the product that is
covered by this License, on a durable physical medium customarily
used for software interchange, for a price no more than your
reasonable cost of physically performing this conveying of source,
or (2) access to copy the Corresponding Source from a network
server at no charge.

15 ...

16 d) Convey the object code by offering access from a designated place
17 (gratis or for a charge), and offer equivalent access to the
Corresponding Source in the same way through the same place at no
further charge. You need not require recipients to copy the
Corresponding Source along with the object code. If the place to
copy the object code is a network server, the Corresponding Source
may be on a different server (operated by you or a third party) that
supports equivalent copying facilities, provided you maintain clear
directions next to the object code saying where to find the
Corresponding Source. Regardless of what server hosts the
Corresponding Source, you remain obligated to ensure that it is
available for as long as needed to satisfy these requirements.

22 e) Convey the object code using peer-to-peer transmission, provided
23 you inform other peers where the object code and Corresponding
Source of the work are being offered to the general public at no
charge under subsection 6d.

25 30. Conduit never distributed and has never distributed any of the Conduit Apps with
26 the accompanying source code or source code offer while the software incorporated MuPDF.
27 Conduit thus failed to comply with and breached its license to use and distribute MuPDF under
28 the GNU AGPL or the GNU GPL.

1 31. Artifex has expended and will expend a significant amount of its own resources to
2 enforce Conduit's contractual obligations under the GNU AGPL or the GNU GPL, including the
3 costs incurred in filing this Complaint and the future costs associated with litigating Artifex's
4 claims. Conduit, furthermore, has been unjustly enriched at the expense of Artifex by avoiding
5 the payment of any license fees and profiting from the sale of the Conduit Apps, which contain
6 MuPDF in breach of the GNU AGPL or the GNU GPL.

7 32. The GNU AGPL and the GNU GPL expressly state that any use of a product
8 licensed thereunder or a work containing or derived from that product that does not comply with
9 their respective requirements immediately terminates the licensee's right to use that product. The
10 GNU AGPL and the GNU GPL provide at Section 8:

11 You may not propagate or modify a covered work except as
12 expressly provided under this License. Any attempt otherwise to
13 propagate or modify it is void, and will automatically terminate your
rights under this License (including any patent licenses granted under
the third paragraph of section 11).

14 33. Conduit's failure to distribute source code along with the Conduit Apps constitutes
15 breach of the requirements set forth in the GNU AGPL and the GNU GPL, as identified above.
16 Conduit's right to copy or distribute MuPDF terminated upon these acts.

Artifex's Copyright in MuPDF

18 34. MuPDF contains a substantial amount of original material that is copyrightable
19 pursuant to 17 U.S.C. §102. Artifex has complied in all respects with the Copyright Act of 1976,
20 17 U.S.C. §§ 101 *et seq.* and all other laws governing copyright, and has obtained from the
21 Registrar of Copyrights Certificate of Registration No. TX 6-989-229 for MuPDF version
22 20070105. A true and correct copy of this Certificate of Registration is attached hereto as
23 **Exhibit 3**. Artifex has also obtained from the Registrar of Copyrights Certificate of Registration
24 No. TX 8-473-187 for MuPDF version 0.5. A true and correct copy of that application is attached
25 hereto as **Exhibit 4**.

26 35. Artifex has placed copyright notices on all copies of MuPDF version 20070105
27 and version 0.5 that it has produced and licensed. Any copies of the programs published by
28 Artifex or under Artifex's authority or license have been published in strict conformity with the

provisions of the Copyright Act of 1976, 17 U.S.C. §§ 101 *et seq.*, and all other laws governing copyright.

36. As set forth above, Conduit never entered into a commercial license agreement with Artifex for its use of MuPDF, and it failed to comply with the terms of the GNU AGPL and the GNU GPL such that Conduit used and distributed MuPDF without authorization under the GNU AGPL or the GNU GPL, or any other agreement. Conduit, therefore, copied and distributed MuPDF without the authorization of Artifex. Such activity constitutes infringement of Artifex's copyright in MuPDF as well as a substantial, irreparable harm upon Artifex.

FIRST CLAIM FOR RELIEF

COPYRIGHT INFRINGEMENT

(17 U.S.C. § 101 *et seq.*)

37. Artifex realleges and incorporates by reference each and every allegation set forth in paragraphs 1-36, inclusive.

38. Before initiating this action, Artifex registered version 20070105 of MuPDF with the United States Copyright Office on January 5, 2007, under Registration No. TX 6-989-229.

39. Before initiating this action, Artifex registered version 0.5 of MuPDF with the United States Copyright Office on February 1, 2018, under Registration No. TX 8-473-187.

40. Through the actions complained of herein, Conduit has infringed and will continue to infringe Artifex's copyright in and relating to any version of MuPDF that Conduit used, including version 20070105 and version 0.5 or derivative works thereof, by producing, distributing, and placing upon the market the Conduit Apps, or portions thereof which were copied from Artifex's copyrighted software.

41. During all relevant time periods, Conduit has lacked any valid license to shield its infringing conduct.

42. Artifex is entitled to an injunction restraining Conduit, its officers, agents, employees, assigns and all persons acting in concert with them from engaging in further such acts of reproduction or distribution in violation of federal copyright law.

1 43. Artifex is entitled to recover from Conduit the damages Artifex has sustained and
2 will sustain as a result of Conduit's wrongful acts as alleged herein. Artifex is further entitled to
3 recover from Conduit the gains, profits, and advantages Conduit has obtained as a result of its
4 wrongful acts. The full extent of Artifex's damages and the gains, profits, and advantages
5 Conduit has obtained by reason of its aforesaid acts of copyright infringement cannot be
6 determined at this time, but will be proven at trial.

SECOND CLAIM FOR RELIEF

BREACH OF CONTRACT

(GNU Affero General Public License)

10 44. Artifex realleges and incorporates by reference each and every allegation set forth
11 in paragraphs 1-43, inclusive.

12 45. Artifex has performed each of the conditions, covenants, and obligations imposed
13 on it by the terms of the GNU AGPL with Conduit.

14 46. Artifex granted Conduit a license to copy and distribute MuPDF under the GNU
15 AGPL. By Conduit's actions as set forth hereinabove, Conduit has substantially and materially
16 breached the GNU AGPL at least by failing to provide the source code of the Conduit Apps to
17 each licensee or a written offer to provide a copy of the source code upon the request of each
18 licensee.

19 47. As a direct and proximate result of these material breaches by Conduit, Artifex is
20 entitled to an injunction requiring Conduit to distribute to each licensee of the Conduit Apps the
21 complete corresponding source code for those products.

22 48. Artifex is further entitled to recover from Conduit the damages Artifex has
23 sustained, including consequential damages, for Artifex's costs in enforcing the GNU AGPL.
24 The amounts cannot be determined at this time. Artifex is also entitled to recover as restitution
25 from Conduit any unjust enrichment, including any gains, profits, and advantages that Conduit
26 has obtained as a result of its breach of the GNU AGPL. The amount of such unjust enrichment
27 cannot be determined at this time.

THIRD CLAIM FOR RELIEF
(In the alternative to the Second Claim for Relief)

BREACH OF CONTRACT

(GNU General Public License)

49. Artifex realleges and incorporates by reference each and every allegation set forth in paragraphs 1-48, inclusive.

50. In the alternative, Artifex has performed each of the conditions, covenants, and obligations imposed on it by the terms of the GNU GPL with Conduit.

51. In the alternative, Artifex granted Conduit a license to copy and distribute MuPDF under the GNU GPL. By Conduit's actions as set forth hereinabove, Conduit has substantially and materially breached the GNU GPL at least by failing to provide the source code of the Conduit Apps to each licensee or a written offer to provide a copy of the source code upon the request of each licensee.

52. In the alternative, as a direct and proximate result of these material breaches by Conduit, Artifex is entitled to an injunction requiring Conduit to distribute to each licensee of the Conduit Apps the complete corresponding source code for those products.

53. In the alternative, Artifex is further entitled to recover from Conduit the damages Artifex has sustained, including consequential damages, for Artifex's costs in enforcing the GNU GPL. The amounts cannot be determined at this time. Artifex is also entitled to recover as restitution from Conduit any unjust enrichment, including any gains, profits, and advantages that Conduit has obtained as a result of its breach of the GNU GPL. The amount of such unjust enrichment cannot be determined at this time.

PRAYER FOR RELIEF

Artifex prays for judgment against Conduit as follows:

1. For permanent injunctive relief, including an order restraining and enjoining Conduit from further infringement of Artifex's copyright, specifically:
 - a. that Conduit, as well as any successor entities, its directors and officers, agents, servants, employees, assigns, and all other persons acting in active

1 concert or privity or in participation with them, and each of them, be
2 enjoined from continuing to market, offer, sell, dispose of, license, lease,
3 transfer, display, advertise, reproduce, develop or manufacture any version
4 of MuPDF and any works derived or copied from any such version of
5 MuPDF or to participate or assist in any such activity;

- 6 b. that Conduit, as well as any successor entities, its directors and officers,
7 agents, servants, employees, assigns, and all other persons acting in active
8 concert or privity or in participation with them, be enjoined from directly
9 or indirectly infringing Artifex's copyright in MuPDF;
- 10 c. that Conduit, as well as any successor entities, its directors and officers,
11 agents, servants, employees, assigns, and all other persons acting in active
12 concert or privity or in participation with them, be enjoined to return to
13 Artifex any originals, copies, facsimiles, or duplicates of any version of
14 MuPDF or any works derived or copied from MuPDF in their possession,
15 custody, or control that are shown by the evidence to infringe any Artifex
16 copyright;
- 17 d. that Conduit be enjoined to recall from all distributors, wholesalers,
18 dealers, retailers, non-Artifex-licensed customers and distributors, and all
19 others known to Conduit any originals, copies, facsimiles, or duplicates of
20 any works shown by the evidence to infringe any Artifex copyright;
- 21 e. that Conduit be enjoined to deliver upon oath, to be impounded during the
22 pendency of this action, and for destruction pursuant to judgment herein,
23 all originals, copies, facsimiles, or duplicates of any version of MuPDF or
24 any works derived or copied from any such version of MuPDF in its
25 possession, custody, or control that are shown by the evidence to infringe
26 any Artifex copyright;

- 1 f. that Conduit distribute to each licensee of the Conduit Apps the complete
2 corresponding source code for the products in accordance with the GNU
3 AGPL or the GNU GPL;
- 4 2. For compensatory damages against Conduit, including any consequential damages,
5 in an amount to be determined at trial;
- 6 3. For statutory damages against Conduit in an amount to be determined at trial;
- 7 4. For an accounting of all gains, profits, and advantages derived by Conduit from its
8 infringement and for its other violations of law;
- 9 5. For all profits and advantages derived by Conduit from its infringement and for its
10 other violations of law to be deemed to be in constructive trust for the benefit of
11 Artifex;
- 12 6. For restitution, unjust enrichment, and compensatory damages according to proof
13 at trial;
- 14 7. For attorneys' fees and costs of suit incurred herein; and
- 15 8. That the Court grant such other, further, and different relief as the Court deems
16 appropriate.

17 **DEMAND FOR JURY TRIAL**

18 Artifex demands a jury trial on all issues so triable.

19 Dated: February 14, 2018

20 DARIN W. SNYDER
21 JESSE J. KOEHLER
22 ASHISH SUDHAKARAN
23 O'MELVENY & MYERS LLP

24 By: /s/ Darin W. Snyder
Darin W. Snyder

25 Attorneys for Plaintiff
26 Artifex Software, Inc.